IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.44 OF 2005

The Commissioner of Customs (Preventive)..Appellant.

V/s.

M/s.Vinay Exports & Ors. ..Respondents.

Mr.R.V.Desai, senior advocate with V.H. Kantharia for appellant.

None for respondents.

CORAM : Dr.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATED : 31TH JANUARY, 2006.

P.C. :-

1. Heard learned counsel for the appellant. Perused the order dated 7th January, 2005 passed by CESTAT. The appellant sought to raise the question of law as under:-

> " Whether in the facts and circumstances of the case, the respondents have discharged the burden of proof cast upon them under section 123 of the Customs Act, in respect of notified goods and the findings of the CESTAT in this regard is perverse?"

2. However, on perusal of the aforesaid order of the CESTAT, particularly para 23 it is clear that the

CESTAT on proper evaluation of the evidence on record and the circumstances and the facts involved in the case has held that the respondent had discharged its onus. The said portion of paragraph 23 reads as under:-

> " Thus, on proper evaluation of the evidence on record and circumstances of the facts involved in the case, we are of the view that the Appellant had discharged the onus lie on him that the seized goods are not smuggled one, licitly imported by M/s.Trust Time & Co. under Bill of Entry No.A-6197 dated 28.4.2000 and later they were sold to the Appellant. D3 declaration monthly rents RG-23 Part-I and other evidences on record prove the genuineness of the said transaction of the watch movements by M/s.Trust Time Co. to the Appellant."

3. Therefore, it is clear that the respondent has discharged its onus which is a finding of fact. Hence no substantial question of law arises in the appeal. Appeal is dismissed in limine with no order as to costs.

(Dr.S.RADHAKRISHNAN,J.)

(J. P. DEVADHAR, J.)